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Supreme Court, U.S.  
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Supreme Court of the  
United States

OCTOBER TERM, 1947.

No. 711.

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY  
ET AL., PETITIONERS,

VS.

A. PHILLIP RANDOLPH ET AL., RESPONDENTS.

ON PETITION FOR WRIT OF CERTIORARI TO THE EIGHTH  
CIRCUIT COURT OF APPEALS.

BRIEF OF RESPONDENTS R. D. WOOD, ROY ELLIOTT  
LANG, JOHN WILLIAM DEARING AND HOLLIS  
ORVAL THOMPSON, AND BROTHERHOOD OF RAIL-  
ROAD TRAINMEN IN OPPOSITION TO PETITION FOR  
WRIT OF CERTIORARI.

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## STATEMENT.

A complete statement of the facts and of the real subject matter involved in this cause is set out in the brief filed on behalf of these respondents in this Court in Docket

No. 661 in opposition to the petition for writ of certiorari and supporting brief of A. Phillip Randolph *et al.*, petitioners therein. Because the points, argument and authorities appearing in said brief in large part answer and dispose of the questions presented in the petition and supporting brief of petitioners, Missouri-Kansas-Texas Railroad Company *et al.*, these respondents respectfully request leave to adopt as a part of this brief all of their opposition brief filed in Docket No. 661. We feel this will avoid needless repetition, and at the same time, will permit us to address ourselves directly to such remaining questions presented by the instant petition and supporting brief as may seem to require discussion.

## SUMMARY OF ARGUMENT.

### POINT I.

**"Question A" Presented in the Petition Is Nonexistent and Does Not in Any Manner Arise on the Record in This Case.**

Rule 65 (c), Federal Rules of Civil Procedure.

*Order of Railway Conductors of America v. Pitney et al.*, 326 U. S. 561, 66 S. Ct. 322.

Railway Labor Act, Title 45, U. S. C. A., Sec. 151 *et seq.*

Norris-LaGuardia Act, Title 29, U. S. C. A., Sec. 101 *et seq.*

### POINT II.

**As to Petitioners, "Question B" Presented in the Petition Does Not Arise on the Record in This Case.**

Railway Labor Act, Title 45, U. S. C. A., Sec. 151 *et seq.*

### POINT III.

**"Question C" Presented in the Petition Presents No Question Arising upon the Record in This Case That Calls for a Review by This Court.**

Rule 65 (c), Federal Rules of Civil Procedure.

## CONCLUSION.

**The Petition Should Be Denied.**

Rule 38, Rules of the Supreme Court, Title 28, U. S. C. A.

## **ARGUMENT.**

### **POINT I.**

#### **"Question A" Presented in the Petition Is Nonexistent and Does Not in Any Manner Arise on the Record in This Case.**

The petition alleges that there are three questions presented on the record in this case which call for a review by this Court on its writ of certiorari to the Eighth Circuit Court of Appeals. We think a reading of the petition serves to illustrate the difficulty of discerning what, if any, substance there is to any of these three purported questions. The petitioners apparently have sought to relate the questions A, B, and C set out in the petition to the principal points which they urged in the Eighth Circuit Court of Appeals on their appeals from the orders and judgment of the District Court. These points which the petitioners urged on appeal are set out among other places in the petitioners' supporting brief at pages 46 and 47 thereof. Briefly these points were that the District Court erred in granting a temporary injunction against petitioners (a) because the respondents, A. Phillip Randolph *et al.*, neither pleaded nor proved a cause of action against petitioners and (b) because the petitioners had a legal right to cancel their contract with the Train Porters. A third ground urged as error on the part of the District Court and warranting a dissolution of the temporary injunction was that the District Court, in not requiring the Respondents, A. Phillip Randolph *et al.*, to give what the petitioners deemed to be adequate security, had abused its discretion in the application of Rule 65 (c) of the Federal Rules of Civil Procedure.

After reading and analyzing the petition and the arguments presented in the supporting brief, we cannot escape the conclusion that the petitioners plainly admit that the judgment of the Eighth Circuit Court of Appeals dissolving the temporary injunction in this case is unquestionably correct. The petitioners' complaint seems to be limited to a quarrel with the opinion of the Circuit Court. In that connection, petitioners seem to register their complaint solely on the ground that the Circuit Court did not, in its opinion, rule that as to them the temporary injunction should be dissolved because the District Court had abused its discretion in the application of Rule 65 (c) of the Federal Rules of Civil Procedure. We find no suggestion of an authority in the supporting brief that this situation, so far as the record in this case is concerned, presents any question for review by this Court.

The fundamental point raised by petitioners in the Circuit Court, namely that no case was pleaded or proved against petitioners, and further, that petitioners had the legal right to cancel their contract with the Train Porters and that the temporary injunction as to them should therefore be dissolved was squarely passed upon by the Circuit Court and decided in favor of the petitioners. The Circuit Court's judgment (R. 705-708) speaks the fact on this proposition and its opinion (R. 695-705) illustrates it.

The Circuit Court's finding that the respondents, A. Phillip Randolph *et al.*, had neither pleaded nor proved a case against the petitioners was predicated upon its finding that the respondents, A. Phillip Randolph *et al.*, had not pleaded nor proved a case of wrongful or tortious conduct against these respondents. In other words, the Circuit Court found that these respondents had in all respects conducted themselves in a lawful manner in asserting the legal rights in question against the petitioners.

This is an important consideration which is apparently overlooked by the petitioners. With this fundamental premise in mind, it must be apparent that as to the petitioners, the question as to whether or not they should be enjoined, because of the alleged wrongful acts of the Brakemen, which in their petition is what "Question A" is restricted to, is nonexistent. The Circuit Court held that the acts of these respondents were not wrongful and for that reason no case for a temporary injunction was made against either these respondents or against the petitioners. "Question A," therefore, is wholly unrelated to any of the jurisdictional questions which were raised by these respondents, not only in the District Court, but in the Circuit Court, and which the Circuit Court ruled in favor of these respondents. In so ruling the jurisdictional questions the Circuit Court followed the controlling decisions of this Court, as exemplified by this Court's opinion in *Order of Railway Conductors of America v. Pitney et al.*, 326 U. S. 561, 66 S. Ct. 322.

So far as "Question A" as presented in the petition might in any way affect petitioners, the petitioners got all of the relief they asked for in the Eighth Circuit Court of Appeals.

Petitioners do seem to enlarge upon "Question A" when they say that "This Court is called upon to decide (a) whether or not the courts have jurisdiction to determine this question or whether it presents a labor dispute which must be referred to the National Railroad Adjustment Board or to the National Mediation Board; and (b) whether, as held by the Circuit Court, this case is controlled by the decision of this Court in *Order of Railway Conductors of America v. Pitney et al.*, 326 U. S. 561, 66 S. Ct. 322, 90 L. Ed. 318" (Petition pp. 18, 19). In view of the record in this case, it is impossible for us to understand this statement of the question, or to understand that

the statement presents any question at all. Is it possible that the petitioners have completely misinterpreted or misunderstood the judgment and opinion of the Eighth Circuit Court of Appeals? In the District Court, as well as on their appeal to the Eighth Circuit Court of Appeals, these respondents raised certain jurisdictional questions. One was that the District Court had no jurisdiction over the subject matter of the action because it consisted of a labor dispute within the meaning of the applicable provisions of the Norris-LaGuardia Act. The Circuit Court of Appeals ruled that question in favor of these respondents. Certainly, these respondents have never contended, and do not now contend, that the National Railroad Adjustment Board or the National Mediation Board has jurisdiction to determine whether the disputes in question came within the purview of the Norris-LaGuardia Act, restricting the District Court's power to render injunctive relief.

Another jurisdictional point which these respondents urged was that the subject matter of this action involved jurisdictional labor disputes which were justiciable solely by the appropriate tribunals set up under the Railway Labor Act and not by the District Courts. On this question these respondents were likewise sustained by the Circuit Court of Appeals. As heretofore pointed out, neither of these jurisdictional questions have anything whatsoever to do with the question as to whether the Porters pleaded or proved a case against the petitioners predicated on alleged unlawful acts of these respondents and the alleged illegal attempt of petitioners to cancel the Porters' contract. The opinion of the Circuit Court of Appeals not only squarely holds that the injunction should have been dissolved because the District Court was without jurisdiction of the subject matter, in view of the statutes mentioned and the controlling decisions of this Court, but it also held that it should be dissolved as to these respondents upon the

ground that the Porters had neither pleaded nor proved a case against these respondents in that the acts of these respondents complained of by the Porters were not unlawful. Based on this and its further finding that the petitioners had a legal right to cancel their contract with the Porters, the Circuit Court of Appeals held that the injunction should also be dissolved as to the petitioners.

So far as the jurisdictional question which involved the Railway Labor Act is concerned and which is raised solely by these respondents, neither the petitioners nor the Porters can point to anything in either the pleadings or the record in this case that distinguishes the case from the Pitney case. Where this question is involved, there is very plainly a question of interpretation and application of conflicting agreements. The Porters not only claim the right to a continuing contract with the petitioners, but claim a contractual right thereunder to perform the Services in Controversy. This so-called contractual right, as we have pointed out in the opposition brief previously filed in Docket 661, is denied by the petitioners. The Trainmen claim, as against the Railroad, the exclusive right under existing contract, custom and usage, to perform the same Services in Controversy. The petitioners have denied this claim. There is, therefore, obviously a situation which does involve conflicting agreements between the petitioners and the Porters on the one hand and the petitioners and the Trainmen on the other hand, and claims by the Porters and by the Trainmen, involving the same sphere of railroad activity. The determination of whether the Porters are right, or whether the Trainmen are right, or whether the petitioners are right, necessarily involves an interpretation and application of the conflicting agreements.

As has been demonstrated in the brief of these respondents in Docket 661 and as was held by the Eighth

Circuit Court of Appeals in its opinion, these matters are justiciable solely by the tribunals established under the Railway Labor Act.

With respect to the jurisdictional point involving the application of the Norris-LaGuardia Act, the Circuit Court's ruling thereon is neither seriously questioned nor briefed by petitioners. Furthermore, petitioners should not be heard to complain of the Circuit Court's ruling on these jurisdictional questions for they have in no way been harmed thereby.

## POINT II.

### **As to Petitioners, "Question B" Presented in the Petition Does Not Arise on the Record in This Case.**

"Question B" presented in the petition does not state any question. The language employed is in the form of an assertion that the Circuit Court erred in declaring that the Porters have a right to resort to the Mediation Board. The assertion, neither by implication nor otherwise, presents any question so far as the petitioners are concerned that calls for a review by this Court on certiorari. Certainly, whether the Porters have a present right to go to the Mediation Board in no way affects the petitioners in this case. The petitioners simply asked for a dissolution of the temporary injunction in this case and that is what the Circuit Court's judgment gave to the petitioners. How, then, can the petitioners be heard to complain in this Court on the question as to whether or not the Porters have a present right to go to the Mediation Board? If the Porters have no present right to go to the Mediation Board, that fact is solely due to the wilful neglect of the Porters and the petitioners as well, in that neither of them saw fit to avail themselves of that remedy, which they both had a right to under the provisions of Section 156 of the Railway Labor

Act. This question has been fully discussed and disposed of in our brief in opposition to the petition of the Porters in Docket 661 in the discussion on the question of the adequacy of the legal remedy.

### POINT III.

#### **"Question C" Presented in the Petition Presents No Question Arising upon the Record in This Case That Calls for a Review by This Court.**

"Question C" presented in the petition certainly cannot be said to be a proper question arising upon the record in this case, calling for a review by this Court on its writ of certiorari. The complaint inherent in this question is that the District Court erred in not requiring the Porters to give an adequate bond as security for the petitioners. Time and again in the argument in petitioners' supporting brief, they discuss this "Question C" in relation to their Points III, IV, V and VI, which they urged on their appeals to the Circuit Court (see petitioners' supporting brief, pages 62, 63). As to Points III, IV and V, each was urged in the Circuit Court as a ground for dissolving the temporary injunction and involved the question as to whether or not the District Court had abused its discretion under Rule 65 (c) of the Federal Rules of Civil Procedure. Whether this question could be properly raised on the appeals is a matter that we need not discuss here. It is sufficient to say that the Circuit Court, by its judgment, did grant the relief which the petitioners prayed for, to-wit, a dissolution of the temporary injunction and, as illustrated by its opinion and as previously pointed out under Point I of this brief, upon the very fundamental ground that the Porters had failed to either plead or prove a claim for injunctive relief against the petitioners. Having so held, it was wholly unnecessary to the Circuit

Court's decision to pass on any question as to whether or not the District Court had abused its discretion under Rule 65 (c) and, if so, whether such abuse was prejudicial error warranting a dissolution of the injunction.

Therefore, in this respect, "Question C," read in the light of the Circuit Court's judgment, answers itself and presents nothing arising on the record in this case for this Court to review.

"Question C," considered in relation to Point VI, which the petitioners state was urged in the Circuit Court, not only presents nothing arising upon the record for review by this Court, but, to say the least, presents a novelty. Petitioners say that the Circuit Court not only should have dissolved the injunction, but should have ordered the Porters to give security in a sum sufficient to protect petitioners from the claims of these respondents that had accrued against petitioners on June 30, 1946. In other words, they desired a bond from the Porters, retrospective in effect. No authority was cited by the petitioners in the Circuit Court and no authority is cited in the supporting brief in support of petitioners' contention. No guide is offered by the petitioners by which the Circuit Court could have made any such order that would have been enforceable or effective against the Porters. The Circuit Court granted the primary relief prayed for by petitioners, namely, the dissolution of the injunction, and in such circumstances, any order on the Porters requiring the Porters to give retrospective security would have been anticlimax. Such an order would obviously have been unenforceable.

Surely not even the petitioners are naive enough to believe that after the Circuit Court had dissolved the injunction, the Porters would be so foolish as to voluntarily put up retrospective security. There could be no penalty inflicted upon the Porters for refusing to comply. In the last analysis, therefore, what the petitioners say with re-

spect to "Question C" is that the Circuit Court erred in not issuing a useless and unenforceable order.

It occurs to us that the questions which the petitioners now seek to present and urge upon this Court as grounds for taking this case are the product of an afterthought and some degree of imagination. Were this not so, would it not have been highly proper for the petitioners to have challenged the Circuit Court of Appeals' attention to the matters now complained of by an appropriate motion for rehearing. Petitioners did not file a motion for rehearing in the Circuit Court of Appeals.

### **CONCLUSION.**

The petition presents no question of a conflict between the decision of the Eighth Circuit Court of Appeals and the decision of another Circuit Court of Appeals on any phase of the subject matter involved in this case. Neither does the petition present any question with respect to a decision by the Eighth Circuit Court of Appeals of an important question of local law in any way probably in conflict with applicable local decisions. Neither does the petition present any question as to whether the Eighth Circuit Court of Appeals decided any important question of Federal Law which has not been, but should be settled by this Court. Neither does the petition present any question as to a decision by the Eighth Circuit Court of Appeals of any Federal question in a way probably in conflict with any applicable decision of this Court and neither does the petition present any question involving a departure by the Circuit Court from the accepted and usual course of judicial proceedings, or any question that it has so far sanctioned such a departure by a lower court as to call upon an exercise of this Court's power of supervision.

In addition, the petition does not present any special or important reason of any kind or character for the granting by this Court to petitioners a review of this case on writ of certiorari (Rule 38, Rules of the Supreme Court, Title 28, U. S. C. A.). For all of the reasons and under all of the applicable authorities set out in the brief of these respondents filed in Docket 661, and for all of the reasons hereinbefore stated, these respondents respectfully submit that the petition for this Court's writ of certiorari should be denied.

Respectfully submitted,

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